



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

02 NOV 2001

File: [REDACTED] Office: Nebraska Service Center

Date:

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER:

Public Copy

[REDACTED] ing date deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

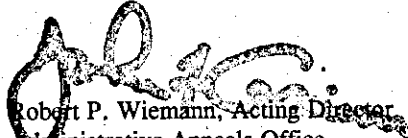
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The director determined that the petitioner has not established a qualifying job offer, as required for classification as an outstanding researcher.

On appeal, counsel submits a job offer letter dated September 22, 1998, which was not included with the initial filing. Counsel also submits an amended photocopy of the first page of Form I-140 in an attempt to convert the petitioner from a self-petitioning alien to that of Northwestern University Medical School.

The record reflects that the alien filed the I-140 with the Nebraska Service Center on February 22, 2000, listing himself as the petitioner under Part 1 of the form. Under Part 8 of the original I-140, the alien executed his signature. As the I-140 was signed by the alien, not a representative of the Northwestern University Medical Center, this constitutes a self-petition. Service regulations at 8 C.F.R. 103.2(a)(2) state: "An applicant or petitioner must sign his or her application or petition." The I-140 contained in the record has not been signed by the United States employer.

Service regulations at 8 C.F.R. 204.5(i)(3)(iii) state that a petitioner for an outstanding professor or researcher should be accompanied by:

An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

It should be noted that the job offer letter submitted on appeal indicates the position is to be "contingent upon the availability of funding" which is to be secured by the alien. The job offer

is described as a "Postdoctoral Fellow position" and does not reflect a tenure-track or permanent position. Thus, the job offer fails to meet the requirements set forth above.

Service regulations at 8 C.F.R. 204.5(i)(1) state "[a]ny United States employer desiring and intending to employ a professor or researcher who is outstanding in an academic field under section 203(b)(1)(B) of the Act may file an I-140 visa petition for such classification." The regulations contain no provision for an alien to self-petition; the petition itself must be filed by the prospective U.S. employer. Because the alien filed the petition on his own behalf, the petition was not properly filed, and this flaw cannot be remedied by the submission on appeal of a job offer letter or amended I-140.

In this matter, the alien beneficiary has no standing to self-petition for the classification sought. Therefore, the petition cannot be approved, and further discussion of the merits of the petition would serve no practical purpose.

ORDER: The appeal is dismissed.